

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2190 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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GHOGHABHAI CHAKUBHAI KOLI

Versus

COMMISSIONER OF POLICE

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Appearance:

MR VIJAY H PATEL , learned Advocate for the Petitioner.

MR.UR BHATT, learned AGP, for the Respondents .

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 23/07/96

ORAL JUDGEMENT

By an order dated 2-3-1996 passed under section 3

(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 by the Commissioner of Police, Rajkot City, the petitioner Ghoghabhai Chakubhai Koli has been detained. The present petition is filed by him challenging the legality and validity of the said order of detention.

The detaining authority, in the grounds of detention supplied to the detenu, has placed reliance on four prohibition cases registered against the detenu in the year 1995 the last one being C.R.No. 219/95 registered on 10-9-95. The detaining authority has also relied on the statements of four witnesses recorded on 27-3-96. On the basis of this material, the detaining authority has recorded his subjective satisfaction that the detenu is a "bootlegger" within the meaning of section 2 (b) of the said Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order it was necessary to pass the detention order and, therefore, the impugned order of detention has been passed. The petitioner has challenged the said order in this petition.

The petition is required to be allowed on the first contention raised by Mr.Patel. He has contended that there is delay in passing the order of detention and, therefore, the petition is required to be allowed.

In Pradeep Nilkanth Paturkar vs S.Ramamurthi, AIR 1994, SC, 656, the Supreme Court quashed the detention order which was passed after five months and eight days from registration of the last case and more than four months from the submission of proposal. In the present case before this Court, as stated above, the last prohibition case was registered against the detenu on 10-9-1995. The detenu was released on bail by the competent Court on 22-9-95. After he was released on bail, no case was registered against him. However, the statements of the witnesses, whose identity has not been disclosed to the detenu, were recorded on 27-3-96. Considering the date of the last offence registered against the detenu the detenu i.e. 10-9-95 and the date of the passing of the order of detention i.e. 2-3-96, there is a delay of more than five months. No material is placed on behalf of the respondents explaining this delay caused in passing the order of detention. Under the circumstances, I hold that the continued detention of the detenu is illegal and void.

In the result, this petition is allowed. The order of detention dated 2-3-96 is quashed and set aside. The detenu Ghoghabhai Chakubhai Koli is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

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